



COVID-19 EMERGENCY MEASURES

Harlay Avocats | 03 April 2020

Adjustments to French corporate law

In order to adapt to health issues and to the constraints of confinement, the French Government has made some changes to French corporate law.

Two orders were therefore adopted on March 25, 2020 aiming to (i) adapt the rules relating to the preparation and approval of annual accounts and to the preparation of forecast management documents by extending statutory deadlines and (ii) adapt the rules relating to the convening, prior information, the holding and deliberations of shareholders' meetings and companies' corporate management bodies.

Order n ° 2020-318 dated March 25, 2020 adapting the rules relating to the establishment, audit, review, approval and publication of the annual accounts and other documents and information that legal entities (or unincorporated private law entities) are required to file or publish in the context of the covid-19 epidemic

This order extended the deadlines for the establishment, audit, review, approval and publication of annual accounts and other documents and information that legal entities or entities without legal personality are required to file or publish.

- **Changes to deadlines for approval of annual accounts**

Article 1 of the aforementioned order allows the period mentioned in paragraph 5 of Article L. 225-68 of the French Commercial Code to be extended for three months, said article governing the time limit for the directorate ("directoire") to present to the supervisory board ("conseil de surveillance"), for verification and control purposes, the documents referred to in the second paragraph of Article L. 225-100 of the aforementioned code.

However, this extension does not apply to companies that have appointed statutory auditors, where these latter have issued their report on the annual accounts before March 12th.

This article applies to companies closing their annual accounts between December 31, 2019 and the end of one month after the state of health emergency comes to an end, that is June 25, 2020.

Article 2 deals with companies in liquidation and extends by two months the period granted to the liquidator to prepare the annual accounts and his report. This postponement concerns only those companies whose financial year ends between December 31, 2019 and June 25, 2020.

Article 3 extends by a period of 3 months the statutory deadline (as a reminder, 6 months from the closing date) given to companies to approve their annual accounts or convene their ordinary annual shareholders' meeting, with no requirement to file a request for extension with the President of the competent Commercial Court. Thus, companies that closed their financial year on December 31, 2019 will have until September 30, 2020 to approve their annual accounts.

However, this extension does not apply to legal entities and private legal entities that have appointed statutory auditors who issued a report on the annual accounts before March 12, 2020.

- **Adjustment of the deadlines for establishing forecast management documents**

Article 4 extends by two months the deadlines imposed on boards of directors, directorates or managing directors of companies with at least 300 employees or whose net turnover is equal to 18 million Euros (Article R. 232-2 of the French Commercial Code), to establish, in application of Article L. 232-2 of the aforementioned code, a statement of liquid and available assets and current liabilities, a forecast income statement, a financing table and a provisional financing plan.

These provisions are applicable to documents relating to the annual accounts or to 6-month periods closed between November 30, 2019 and June 25, 2020.

- **Adjustment of the deadlines imposed on private-law bodies receiving a public subsidy**

Finally, Article 5 extends by three months the deadline imposed on private-law bodies receiving a public subsidy to produce the financial report provided for at line 6, Article 10 of law n° 2000-321 dated April 12, 2000 on the rights of citizens in their relations with the authorities.

Order n° 2020-321 dated March 25, 2020 adapting the rules for the meeting and deliberation of shareholders' meetings and management bodies of legal entities (or unincorporated private law entities) pursuant to the covid-19 epidemic

This order adapts the rules applying to meetings and deliberations of shareholders' meetings and management bodies of legal entities or unincorporated private law entities.

- **Scope**

Article 1 of said order gives a non-imitative list of the legal entities and entities concerned by the order.

Civil and commercial companies, but also meetings of transferable securities- or financial securities-holders fall within the scope of its application.

- **Adaptation of the rules on convening and information**

For listed companies, Article 2 removes the penalty rendering notice of the shareholders' meeting invalid where this notice could not be sent by post for reasons beyond its control. Circumstances beyond its control cover in particular the case in which companies or their

service providers have been prevented from accessing their premises or preparing the necessary notices in the context of the covid-19 epidemic.

Article 3 allows companies required to respond to a communication request from a shareholder to do so electronically.

- **Adaptation of the participation and deliberation rules**

Article 4 exceptionally authorizes all companies, whatever their form, to hold their shareholders' meetings without the presence (physical or by conference call or audio-visual) of their shareholders if the meeting was convened on premises concerned by an administrative confinement measure on the date of the convocation or meeting.

The decision to apply this measure lies with the competent corporate body, which can delegate its competence to the company's legal representative.

This measure does not affect other rights available to members of the shareholders' meeting, including the right to vote, to ask written questions and to propose the inclusion of items on the agenda (for "sociétés anonymes" or "sociétés en commandite par actions").

In addition, Article 5 extends and provides more flexibility for the use of videoconferencing and telecommunications.

In effect, this article authorizes these different means for companies for which these modes of participation are not provided for by law, and extends it for companies for which these modes of participation were already provided for; it does so by neutralizing certain requirements, such as the existence of a clause to this effect in the articles of association.

All decisions falling within the competence of shareholders' meetings can be taken through these alternative methods of participation. However, these means must necessarily ensure that the shareholders or partners are identified.

Article 6 also relaxes the use of written consultation of shareholders' meetings for companies in which this method of participation is already provided for by law.

All decisions falling within the competence of the shareholders' meetings are affected by this measure.

As for Article 7, it sets out the formalities for convening shareholders' meetings whose place and methods of participation will be modified following the application of the provisions of Articles 4, 5 and 6 of the Ordinance.

In the event that a company decides to apply the above-mentioned articles when all or part of the formalities for convening the meeting have been completed prior to the date of this decision, the members of the meeting must be informed at the latest 3 working days before the date of the meeting. The modification of the meeting place or the methods of participation will not require the formalities for notice to be repeated and will not mean that the meeting has been unlawfully convened.

- **Relaxation of the conditions for the meeting of collegial administrative, supervisory and management bodies**

As for shareholders' meetings, Article 8 makes the use of videoconferencing and telecommunications facilities more flexible for supervisory and management bodies, whether or not this use is provided for by law or prohibited by the articles of association.

Again, the technical means put into place by the company must allow the members to be identified.

Further, Article 9 also renders the use of written consultations more flexible for these bodies, whether or not this is provided for by law.

The use of this deliberation mode is authorized for all meetings of these management bodies.

- **Application of the order over time**

The provisions of this order are applicable retroactively to all meetings held from March 12, 2020 until July 31, 2020, subject to extension of this period to a date fixed by decree and at the latest November 30, 2020.



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